

FREDERICK COUNTY PLANNING COMMISSION
MEETING OF JULY 12, 2006
9:30 a.m.

Members Present: Al Duke, Chairman, Robert White, Vice Chair; Joe Brown, Secretary;
Michael Cady, Commissioner Liaison, Fern Hines; Denny Crum.

Joan McIntyre absent.

Staff Present: Mark Depo, Development Review Planning Director; Gary Hessong; Division of
Permitting & Development Review Director; Michael Wilkins, Principal Planner;
Justin Horman, Principal Planner; Stephen O'Philips, Principal Planner, Kathy
Mitchell, Assistant County Attorney; Lori Barlet-Chapman, Substitute Recording
Secretary.

1. MINUTES:

Mr. White made a motion to approve the minutes as written from the June 14,
2006, Planning Commission meeting. 2nd by Mr. Brown.

Yea 6 Nay 0 (McIntyre absent)

2. PLANNING COMMISSION COMMENTS:

Mr. Cady stated the Board of County Commissioners was still receiving
applications for anyone interested in serving on the Planning Commission.
Letters of interest should be directed to Joyce Grossnickle. Ms. Hines concurred.
Mr. Brown asked Commissioner Cady about the Fire Sprinkler Ordinance hearing
on July 18, 2006. Mr. Cady spoke of the public hearing that deals with mandating
sprinkler systems in single-family detached homes, both on public water as well
as well and septic. Mr. Duke commented on the meeting of July 11, 2006, with
the BOCC, BOE, and FcPc members regarding the upcoming APFO text
amendment public hearing for July 18, 2006. Also noted that the FcPc members
appreciated and thanked Mr. Ray Barnes and Ms. Beth Pasierb, of FCPS for their
attendance at the APFO test meetings.

3. AGENCY COMMENTS:

N/A

4. PRELIMINARY/FINAL PLATS

Providence Subdivision – Requesting approval for a new public street to serve
two minor subdivisions. Located on the southeast side of Kemptown Church Rd,
approximately 500' northeast of Hanford Ct.. Zoned: Residential (R-1), Urbana

Planning Region. Tax Map 98/Parcels 28 and 81. File #M-2864; Hansen # 4828
(Michael Wilkins)

All parties and Staff wishing to give testimony in this matter were sworn in.

Staff Findings/Recommendations:

Findings

Based upon the discussions in this report, Staff finds that the application meets and/or will meet all applicable Zoning, Subdivision, APFO, and FRO requirements once all Staff and agency comments and conditions are complied with or mitigated. Staff has no objections to the proposed development.

Recommendation:

Should the FcPc approve this Application (M-2864, AP 4828) for the proposed new public street, Staff recommends that the following items be added as conditions to the approval:

1. The Applicant shall comply with all staff and agency comments.
2. The Applicant shall add a note to the plat stating FcPc approval and date.
3. The Preliminary Forest Plan must be approved prior to Preliminary Plan approval.
4. The proposed street shall be revised to meet the 22' wide paved travelway requirement.
5. Should two (2) or more lots be removed from the proposed development, an alternative method for providing fee-simple access to a public road (such as panhandle lots served by a common drive) must be provided.
6. Add a note to the plat stating, "Sidewalks shall be maintained by the adjoining lot owner, a homeowners association or similar organization."

Applicant Presentation:

Mr. Chris Smariga, Harris Smariga, and Mr. Atillio DeMarco, Developer with MD Development Corporation representing the applicant presented the proposal.

They spoke of the sidewalk issue (Recommendation #6) that the applicant used standard County detail and the applicant would have no problem increasing the pavement width 2 ft. Mr. Smariga stated there will be a Home Owner's Association (HOA) agreement to maintain the Storm Water Management and the Forest Conservation areas, sidewalks will be included with that and be maintained by the HOA.

Public Comment

N/A

Rebuttal:

N/A

Decision: Mr. Brown made a motion to grant conditional approval in accordance with the staff recommendations. 2nd by Mr. Crum.

Yea 6 Nay 0 (McIntyre absent)

All parties and Staff wishing to give testimony in this matter were sworn in.

Lake Linganore, Aspen 4: Requesting Preliminary Plan approval for 9 single family units on 8.15 acres, located on the east side of Accipiter Drive. Zoned: Planned Unit Development (PUD) New Market Planning Region. FILE #S-829G, Hansen #2530 (Justin Horman)

Staff Findings/Recommendations:

Findings

Based on the discussion in this report and with the conditions listed below, Staff finds that the application meets and/or will meet all applicable Subdivision, Zoning, APFO and FRO requirements. Staff has no objection to conditional approval of the Preliminary Plat.

In accordance with the Zoning Ordinance, the Applicant is requesting a modification from the FcPc to allow the subdivision of nine new lots on an existing private roadway within a PUD. The use of private streets has been approved in other sections of Lake Linganore and in other PUD's in the county. This proposal is consistent with similar requests approved by the Planning Commission. Staff has no objection to the modification requested by the applicant.

The applicant has addressed two conditions from the June 2005 staff report (Condition #4 and #6):

4. The Preliminary Plan cannot be signed prior to the approval and execution of the Memorandum of Understanding (MOU). The Memorandum of Understanding was entered into by the Frederick County Board of County Commissioners and the applicant on June 28, 2005.
6. Revise note 11 on the plan to W1/S1 classification. The correct classification (W3/S3) has been noted.

Recommendation:

Should the Planning Commission conditionally approve this Preliminary Plat (S-829G, Hansen # 2530) for the proposed subdivision of 9 lots transferred from Isles of Balmoral on 8.15 acres, Staff recommends that the following items be added as conditions of approval:

1. Comply with all agency comments through completion of this project.
2. Comply with all FRO comments.
3. Add a note to the plat stating the FcPc approval of a modification to allow the subdivision of nine new lots on a private roadway within a PUD.
4. Prior to plat recordation, the appropriate filings to de-plat the Isle of Balmoral lots in accordance with the MOU must be reviewed, approved and recorded.
5. Add a chart that tracks the number of lots available per the MOU, which lots which are being transferred to this preliminary plan, what section the lots are from, and the number of lots left over.
6. Add a note, "No parking is permitted on the common access drive"
7. Delineate the off street parking on the plan.
8. On lot grading plans that show safe access and drainage must be approved prior to recordation and to be inspected as part of the building permit process.

Applicant Presentation:

Ms. Chris Mayo, Harris Smariga & Associates, Mr. Jim Dimiglio, Mr. John Clark, Ms. Jean Bollinger, Land Stewards, and Ms. Krista McGowan, Miles & Stockbridge, representing the applicant Aspen Associates LLD, presented the applicant's proposal. Ms. Mayo spoke of Mr. Brown's concerns with the storm drainage and concurred with his comments and will look further into it. She is requesting approval. Mr. Diminglio made comments regarding Mr. Brown's drainage concerns. He suggested installing 6" sewer house connections in the four places where they are needed in regard to the sanitary sewer.

Public Comment

Ms. Kathy Brown, resident of Aspen Village, Lake Linganore, Chair of Aspen Village, and head of a committee that is working with the Developer for the past three years on many issues.

Rebuttal:

N/A

Decision: Mr. White made a motion to grant conditional approval in accordance with the staff recommendations with the addition of 3 additional conditions that (#9) the staff would handle the safe and ease of access to the common drive at both entrance points to Accipiter Drive, (#10) the applicant and staff would explore a common line and the drainage issues, and (#11) that the locked gate be used in preference to removable bollards. 2nd by Mr. Crum.

Yea 6 Nay 0 (McIntyre Absent)

5. SITE PLANS

All parties and Staff wishing to give testimony in this matter were sworn in.

*** PLEASE NOTE BOTH AUDIO AND VIDEO TAPES ARE AVAILABLE UPON REQUEST. 4**

Wedgewood Business Park Lots 25 and 26- Requesting Site Plan Approval for two office/warehouse spec buildings are proposed totaling 25,600 square feet on lot 25 and two office/warehouse spec buildings totaling 24,900 square feet on Lot 26 situated on the east side of International Boulevard east of Wedgewood Boulevard. Zoned: Limited Industrial, Adamstown Planning Region, Tax Map 86 Parcel 8, File#: SP-94-13 Hansen#: 4443 (Mark Depo)

Staff Findings/Recommendations:

Findings

Based on the discussion in this report and with the conditions listed below, Staff finds that the application does not meet all applicable Zoning Ordinance requirements. Per Section 1-19-136 only one principal structure is allowed on a commercial and industrial zoned Lot. The Applicant is proposing 2 building on each Lot. The proposed site plan does not comply with Section 1-19-136. In the past, the Planning Commission has approved projects with two or more buildings located on one lot. However, many of these projects permitted multiple buildings on one lot in a commercial and industrial zone since the project was considered a planned commercial/industrial development and/or zoned MXD or PUD, or viewed as one building and use (although unattached) in the case of self storage facilities.

There are many design issues (setbacks, parking, loading area, building layout, landscaping, connectivity) that were raised with the concept of two buildings on one lot. Staff has done some preliminary research as to why only one building is permitted and has not found any substantial reasoning for this requirement. Staff recommends that this issue be further researched and possibly the submission of a text amendment for Section 1-19-136.

Staff does find that the application does and/or will meet all applicable APFO and FRO requirements. Staff objects to conditional approval of the site plan.

Recommendation:

Staff recommends denial of the site plan application based on the above referenced Board of Appeals Case, the discussion in this report, and the application does not comply with Section 1-19-136 of the Zoning Ordinance.

However, should the Planning Commission approve this Site Plan (SP-91-13, AP 4443) for the proposed two office/warehouse spec buildings totaling 25,600 square feet on Lot 25 and two office/warehouse spec buildings totaling 24,900 square feet on Lot 26. Staff recommends that the following items be added as conditions of approval:

1. The Applicant shall delineate the proposed setbacks on the plan and add proposed setbacks under note #4.

2. A joint access, parking and use agreement between the property owners, must be executed, recorded and noted on the plan prior to the final signature of the site plan.
3. Add a note that if the sign(s) are internally lit, they will be low illuminated and provide the size, type, and location of all proposed building signage.
4. Show sewer line and the easements for sewer on the plan.
5. Staff is requiring the applicant to revise soil note to reflect the AfB soil.
6. Remove notation 10 referring to staff approval of outdoor storage. Planning Commission must approve outdoor storage.
7. Revise the parking calculations using the 1 space per 500 square feet of warehouse and 1 space per 300 square feet of office area and locate the parking spaces adjacent to the building that the spaces are allocated.
8. Provide walls to screen the loading area from International Boulevard. The walls should be of the same material as the buildings.
9. Provide additional landscaping in the loading areas to break-up the macadam and adjacent to the parking areas.
10. The Applicant shall provide FRO fee-in-lieu payment or Banking prior to site plan approval.
11. Address all agency comments as the plan proceeds through completion.

Agency Comments:

Ms. Kathy Mitchell, Assistant County Attorney made clarifying comments about §1-19-136, Frederick County Code and discussed Staff's interest in proposing a text amendment for this section in the future.

Applicant Presentation:

Mr. Rand Weinberg, Weinberg & Miller, representing the applicant Phil and Rick Topper of WBP Partners, LLC, presented the applicant's proposal. In regards to recommendation #7, the applicant would like it to read, "parking shall be as shown in the revised lay out plan which eliminates the row of spaces on the northeast side of the site." "If directed by staff, applicant will construct these spaces within a reasonable time after receiving such direction." Also, the applicant is suggesting that #8 read that the applicant will provide additional screening instead of walls, and condition #9 should be eliminated.

Public Comment

N/A

Rebuttal:

N/A

Decision: Mr. White made a motion to grant conditional approval in accordance with the staff recommendations as modified with #7 being replaced by the language as provided by the applicant with the condition # 8 to be modified to say provide additional screening for the loading area, and eliminate the part about the walls, eliminate #9, and #10 & #11 becoming #9 & #10 to screen

the loading area and as shown on the proffered lay out plan. New condition #11 accept the revised lay out plans for traffic flow and landscaping. 2nd by Mr. Crum.

Yea 6 Nay 0 (McIntyre Absent)

Decision: Mr. Cady made a motion that the Planning Commission request the appropriate staff to prepare a text amendment regarding §1-19-136 that resolves the inconsistency between the practice that has been in place for several years, and the Ordinance dealing with multiple buildings on a single lot. 2nd by Mr. White.

**Yea 6 Nay 0
(McIntyre Absent)**

All parties and Staff wishing to give testimony in this matter were sworn in.

Stanford Industrial Park, Section 2, Lot 28– Site Plan approval for a 52,000 square foot office and warehouse facility. Located on the east side of Winchester Blvd. Zoned: Limited Industrial (LI), Adamstown Planning Region. Tax Map 94/Parcel 89. File #SP-89-06; Hansen # 4826 (Michael Wilkins)

Staff Findings/Recommendations:

Findings

Based upon the discussions in this report and with the conditions listed below, Staff finds that the application meets and/or will meet all applicable Zoning, Subdivision, APFO, and FRO requirements once all Staff and agency comments and conditions are complied with or mitigated. Staff has no objection to conditional approval of the site plan.

Recommendation:

Should the FcPc approve the site plan (SP#89-06, AP4826) for the proposed 52,000 sq ft speculative warehouse/office facility, Staff recommends that the following items be added as conditions to the approval:

1. Applicant shall continue to address all agency comments through the completion of this project.
2. Prior to site plan final approval and signature, Forest plans must be approved. Prior to grading or building permit application, forest easements must be recorded.

3. An Addition Plat revising the lot lines of Lots 26 and 28 as illustrated on the site plan must be recorded prior to site plan final approval and signature.
4. Prior to grading or building permit application, the developer must contribute \$39,000 to the existing escrow account for road improvements at the US Route 15 and Mountville Road intersection in accordance with the LOU.
5. The Applicant shall submit a detail of the free standing and a detail and location of the proposed tenant identification signage for review and approval.

Applicant Presentation:

Mr. Chris Smariga, Harris Smariga & Associates, Mr. Jim Fitzgerald & Shamus Fitzgerald, Owners, representing the applicant presented the applicant's proposal. Mr. Smariga stated that his clients would like some flexibility to use the 1 per 1,000 square ft. warehouse standard that was used in the previous application by this applicant. Giving the applicant flexibility, if they do not need to put all the parking spaces on the back of the loading area, would eliminate some of those parking spaces and create more green area.

Public Comment

N/A

Rebuttal:

N/A

Decision: Mr. Brown made a motion to grant conditional approval in accordance with the staff recommendations adding a 6th recommendation that the applicant shall work with staff regarding the parking issue, and a 7th recommendation that the applicant will amend the plan to provide pedestrian safety at the north east end of the building. 2nd by Mr. Crum.

Yea 6 Nay 0 (McIntyre Absent)

All parties and Staff wishing to give testimony in this matter were sworn in.

6. COMBINED PRELIMINARY/FINAL PLATS

Old Wolfsville, Section 1, Lots 3,4 & 5 – Requesting approval for three (3) new lots in a major subdivision. Located between Pleasant Walk Rd. and Harp Hill Rd., approximately 1,200' south of MD Rt 17. Zoned: Residential (R-1), Middletown Planning Region. Tax Map 30/Parcels 18. File #M-041; Hansen # 2905 (Michael Wilkins)

Staff Findings/Recommendations:

Findings

Based upon the discussions in this report, Staff finds that the application meets and/or will meet all applicable Zoning, Subdivision, APFO, and FRO requirements once all Staff and agency comments and conditions are complied with or mitigated. Staff has no objections to the proposed development.

Recommendation:

Should the FcPc approve this Application (M-041, AP 2905) for the proposed 3 new lots in a Major Subdivision, Staff recommends that the following items be added as conditions to the approval:

1. The Applicant shall comply with all staff and agency comments.
2. The Applicant shall add a note to plat stating FcPc approval and date.
3. The Applicant shall revise the FRO exemption note on the plan and comply with the conditions of the Intra-Family Transfer exemption.

Applicant Presentation:

Mr. Reed Hammond, Lavalley & Associates, representing the applicant presented the applicant's proposal.

Public Comment

N/A

Rebuttal:

N/A

Decision: Mr. Brown made a motion to grant conditional approval in accordance with the staff recommendations. 2nd by Mr. White.

Yea 6 Nay 0 (McIntyre Absent)

Decision: Mr. Brown made a motion to adjourn until 1:30. 2nd by Ms. Hines.

Yea 5 Nay 1 (Cady opposed) (McIntyre Absent)

(Break for lunch at 11:50 a.m.)

(Resumed at 1:33 p.m.)

(Mr. Cady Absent)

Decision: Mr. Brown made a motion to ask staff to invite soil conservation and DUSWM to a meeting about Lake Langanore in regard to the environmental issues that FcPc will be going through over the next years as the development of Lake Langanore moves forward, and the concerns as steep slope development, and protection of stream corridors and protection of the lake. 2nd by Mr. White.

Yea 4 Nay 1 (Crum Opposed) (McIntyre & Cady Absent)

7. MISCELLANEOUS REQUEST

Staff-generated Forest Resource Ordinance (FRO) Text Amendments – Discussion regarding Option ‘A’ and Option ‘B’ FRO text Amendments. (Stephen O’Philips)

Mr. Cady arrived at 1:57 p.m.

Applicant Presentation:

Mr. Stephen O’Philips presented two options for the 2006 FRO Text Amendment- Option “A” and Option “B”- as an alternative to Commissioner Thompson’s FRO Text Amendment that had previously been recommend for denial by the FcPc in April of 2006. The difference between Option A and Option B involved proposed increases to forest thresholds. Option A increased forest threshold values for residential lots only. Option B was a 10-point increase in all threshold levels for all types of projects. Staff feels that Option B is more reasonable and consistent with feedback received from the Planning Commission and equally distributes the forest obligation amongst all zoning types and sites rather than Option A. Option A and B are being presented only as an alternative to Commissioner Thompson’s increases if it is felt that increased forest planning and preservation should be made. Mr. O’Philips spoke of the 10 miscellaneous changes that are being proposed by the staff, which are divided into substantive and minor changes.

Statistics show that the current FRO system is not encouraging more plantings of trees in regard to new forestation. Staff feels that language needs to be implemented to create more flexibility with the two year window Forest Improvement Protection Agreement (FIPA). They feel it is too short of window to be assured that new forest will survive and probably three years are needed.

Ms. Becky Wilson, Urban and Community Forestry Coordinator for the Western Region for the Maryland Department of Natural Resources Forest Service concurs that it takes longer than the two years to reach the threshold for successful plantings. If the applicant meets that requirement for survival, whether it is a

banking site or mitigation site then their obligation should be released. This requirement is in the state law and regulations. There are a number of factors that Staff can consider in approving the sites as being successful. Applicants know up front that they are entering into a planting agreement and that there is an obligation to have successful plantings.

Ms. Wilson commented that the state has in past program reviews supported the banking program as it exists right now in Frederick County. She further stated that some elements that are in the proposal that Department of Natural Resources is currently reviewing, and more time is needed to give a response on items such as increasing the threshold, and DNR would be supportive of the increase in fee-in-lieu request.

Public Comment

Mr. Ross Lillard, Fox & Associates, spoke of financial concerns of the newly proposed requirements. He is in favor of maintaining current regulations.

Mr. Scott Gove, Forest Qualified Professional, Sandhill Enterprise, Inc., disagrees with many of the substantive changes proposed by Staff. Does concur with some of the recommended minor changes.

Mr. Bob Mulkey, President, Land Use Council, Frederick Builders Association, views the proposed changes as a restrictive policy. Land Use Council opposes the proposed changes as proposed. The impact of the additional fees will be on the homebuyer.

Ms. Krista McGowan, Miles & Stockbridge, representing various real estate developers, and property owners, specifically Land Stewards today, generally concurs with previous three speakers concerns. As proposed, the requirements would apply to every project, and affordability is a problem as well. She objects to the increase of the planting requirement for projects on behalf of Land Stewards as well as all other clients.

Mr. O'Philips said he would revise the current proposal based on the conversations today and is waiting on the written response from DNR to proceed.

Adjourned at 3:06 p.m.

Respectfully Submitted,

Alan E. Duke; Chairman